

DOCKET FILE COPY ORIGINAL

RECEIVED & INSPECTED

MAR 4 2003

FCC-MAILROOM

LAW OFFICES  
ROBERT J. BUENZLE  
11710 PLAZA AMERICA DRIVE  
SUITE 2000  
RESTON, VIRGINIA 20190

FACSIMILE  
(703)430-4994

E-MAIL buenzle@buenzlelaw.com

TELEPHONE  
(703)430-6751

March 3, 2003

**SENT BY FEDERAL EXPRESS**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
9300 East Hampton Drive  
Capitol Heights, MD 20743

Re: New Ulm Broadcasting Company "Opposition"  
to supplemental "Comments of Linda Crawford" Re  
New Ulm Counterproposal in M8 Docket No. **02-248**,  
RM-10537. FM Table of Allocations. Smilev, Texas.

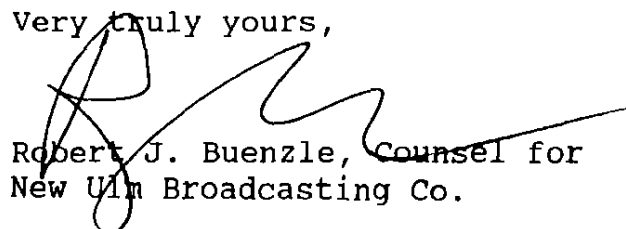
Dear Ms. Dortch:

Transmitted herewith is an original and four copies of  
the above captioned pleading as directed to the Assistant  
Chief, Audio Division, Media Bureau.

It is requested that the additional copy marked "FILE"  
be date-stamped and returned to us in the enclosed self-  
addressed stamped envelope.

Should any additional information be required, please  
contact this office.

Very truly yours,

  
Robert J. Buenzle, Counsel for  
New Ulm Broadcasting Co.

No. of Copies rec'd  
List ABOVE

0+4

ORIGINAL

Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

RECEIVED & INSPECTED
MAR 4 2003
FCC - MAILROOM

In the Matter of ) MB Docket No. 02-248  
Amendment of Section 73.202(b) )  
Table of Allotments ) RM-10537  
FM Broadcast Stations )  
Smiley, Texas )

To: Assistant Chief,  
Audio Division  
Media Bureau

OPPOSITION TO COMMENTS OF LINDA CRAWFORD

On February 18, 2003, Linda Crawford (hereinafter "Crawford") Filed supplemental "Comments of Linda Crawford" in this proceeding and, based upon her Comments, requested that the pending Counterproposal of New Ulm Broadcasting (hereinafter "New Ulm"), should be "dismissed". For the reasons indicated below, New Ulm opposes Crawford's request.

The sole "new fact" raised by Crawford in her Comments is the issuance of a recent case, Pacific Broadcasting of Missouri LLC, for Special Temporary Authorization, \_FCC Red\_, FCC 03-18 (released February 11, 2003), which included language wholly unrelated to the stated question in the case of issuing or **not** issuing a request for special temporary authority, but reaching in its last two paragraphs the separate issue of the Commission's existing policy on rulemaking proposals which include provision for a "backfill channel" to replace a reallocated channel.

In that case the Commission did indeed question application of its existing backfill policy and went so far as to indicate

that "henceforth" its policy would be modified. While this new policy, if not subsequently modified, would appear to clearly apply "henceforth" to new cases being filed with the Commission, it is silent, and there is no specific language of any kind, as to its intended applicability to cases already on file in various stages of processing or review, and since such ex vost facto application of the new policy to pre-existing pending cases would undoubtedly result not only in severe inequities to existing petitioners but also results which would be patently contrary to the public interest, there is good reason to believe that the new policy is meant to be prospective in nature and not meant to apply to pending cases.

Moreover, since this was a matter of first impression raised without prior notice in the Pacific Decision, there was perforce no opportunity for any interested or affected party to comment or suggest less disruptive alternatives which would satisfy the Commission's expressed concerns while preserving the benefits achieved through use of proposed backfill channels.

Since no one had any prior notice that changes in this policy would be considered within the context of the Pacific case, it is safe to assume that parties such as New Ulm and others will in fact seek clarification and/or partial reconsideration of the Pacific decision within the context of that case. Having done so, such parties would hopefully receive the clarification that the new policy is indeed meant to be applied on a prospective basis only and not on a retroactive

basis to existing cases, or on reconsideration that the policy itself could be modified in various less disruptive ways to achieve the same goals. It is further predictable that if, ad arguendo, the policy change were not only retained without modification but also proposed to apply on a retroactive basis, that this would result in further appeals as well as requests for waiver of that new policy as it would apply to individual cases, such as New Ulm's.

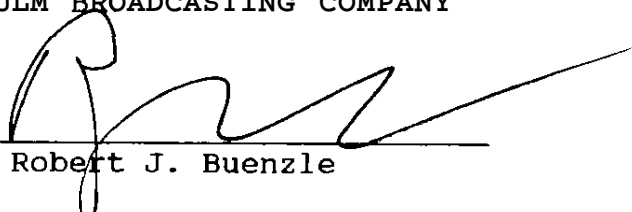
Not knowing at this point how the Commission will respond to requests for clarification and reconsideration the one thing that is clear now is that it was premature and without merit, to say the least, for Crawford to request "dismissal" of New Ulm's counterproposal, and the resultant dooming of any hope for a first service for the town of Schulenburg, Texas, based upon the statements included by the Commission in the last two paragraphs of its rejection of a request for temporary authority in the Pacific case on February 11, 2003.

Wherefore, for the reasons as stated above, it is respectfully submitted that the supplemental "Comments of Linda Crawford" filed February 18, 2003, and requesting the dismissal of the New Ulm counterproposal, were improvident and without merit and should therefore be denied and dismissed.

Respectfully submitted,

NEW ULM BROADCASTING COMPANY

by

  
Robert J. Buenzle

Its Counsel

Law Offices  
Robert J. Buenzle  
11710 Plaza America Drive  
Suite 2000  
Reston, Virginia 20190  
(703) 430-6751

March 4, 2003

CERTIFICATE OF SERVICE

I, Robert J. Buenzle, do hereby certify that copies of the foregoing Opposition to Comments of Linda Crawford have been served by United States mail, postage prepaid this 4th day of March, 2003, upon the following:

\*John A. Karousos, Esq.  
Assistant Chief, Audio Division  
Office of Broadcast License Policy  
Media Bureau  
Federal Communications Commission  
Portals 11, Room 3-A266  
445 12th Street SW  
Washington, D.C. 20554

Linda Crawford  
3500 Maple Avenue, #1320  
Dallas, Texas 75219  
Smiley Petitioner

Victoria Radio Works Ltd.  
Radio Station KVIC  
8023 Vantage Dr.  
Suite 840  
San Antonio, Texas 78230

Pacific Broadcasting of Missouri, LLC  
Radio Station KTKY  
7755 Carondelet, Avenue  
Clayton, Missouri 63105

David P. Garland  
1110 Hackney Street  
Houston, Texas 77023  
Stargazer Broadcasting, Inc.

Maurice Salsa  
5615 Evergreen Valley Drive  
Kingwood, Texas 77345

Bryan A. King  
BK Radio  
1809 Lightsey Road  
Austin, Texas 78704

Matthew L. Liebowitz, Esq.  
Liebowitz & Associates, P.A.  
One SE Third Avenue, Suite 1450  
Miami, Florida 33131  
Counsel for Next Media Licensing

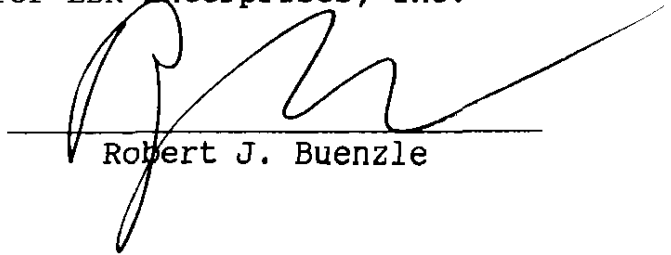
Gregory L. Masters, Esq.  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006  
Counsel for Capstar Texas LP

Mark N. Lipp, Esq.  
J. Thomas Nolan, Esq.  
Shook, Hardy & Bacon, L.L.P.  
600 14th Street, N.W.  
suite 800  
Washington, D.C. 20005-2004  
Counsel for Joint Petitioners

Gene A. Bechtel, Esq.  
Attorney At Law  
1050 17th Street N.W.  
Suite 600  
Washington, D.C. 20036  
Counsel for Elgin Fm Limited  
Partnership and Charles Crawford

Harry F. Cole, Esq.  
Lee G. Petro, Esq.  
Fletcher, Heald Hildreth, P.L.C.  
1300 North 17th Street, 11th Floor  
Arlington, Virginia 22209  
Counsel for Smiley Broadcast  
Interest

Gregg P. Skall, Esq.  
Patricia M. Chuh, Esq.  
Womble Carlyle Sandridge & Rice, PLLC  
1401 Eye Street, 7th Floor  
Washington, D.C. 20005  
Counsel for LBR Enterprises, Inc.



Robert J. Buenzle

\*Also Served by Fax